

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-023442

02/17/2009

HONORABLE KENNETH L. FIELDS

CLERK OF THE COURT
L. Gilbert
Deputy

JEROME KOTTMER, et al.

KRISTIN A ROONEY

v.

BILL WALKER, et al.

C ADAM BUCK

JENNIFER A SPARKS

MINUTE ENTRY

ECB-414

9:01 a.m. This is the time set for Evidentiary Hearing re: Plaintiffs' Application for Preliminary Injunction. Plaintiffs are present and represented by counsel, Kristin A. Rooney. Defendants Arizona's Premier Tile and Stone, LLC, Arizona's Tile and Stone Mobile Showrooms, LLC and Walker are represented by counsel, C. Adam Buck. Defendant JP Morgan Chase Bank, NA is represented by counsel, Jennifer A. Sparks.

A record of the proceedings is made by audio/videotape in lieu of a court reporter.

Discussion is held.

The parties advise the Court that they have reached an interim agreement as set forth in the proposed order presented to the Court this date.

IT IS ORDERED approving the parties' Stipulation, all in accordance with the formal written Order signed by the Court on February 17, 2009 and entered (filed) by the Clerk on February 17, 2009.

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IT IS FURTHER ORDERED lifting the Temporary Restraining Order.

IT IS FURTHER ORDERED that counsel for Plaintiffs shall prepare and submit an order for the Court's review and signature setting forth the specific accounts with Chase Bank that are to be closed.

IT IS FURTHER ORDERED the parties shall, within 30 days of today's date, choose a private mediator or advise the Court of the parties' request for referral to the Court's Alternative Dispute Resolution Office for the purposes of setting a mediation hearing/settlement conference.

IT IS FURTHER ORDERED all pretrial motions, with the exception of motions in limine, shall be filed no later than **June 30, 2009**.

IT IS FURTHER ORDERED as follows:

1. Setting a Trial Management Conference on **August 21, 2009 at 9:30 a.m. (time allotted: 30 minutes)**. All parties must appear in person and cannot appear telephonically.
2. Setting Trial to a Jury on **September 21, 2009 at 9:30 a.m. (time allotted: Four (4) days)**. PLEASE NOTE: Trial will not proceed on Fridays, as Fridays are Law and Motion day for this division.

Duties Prior to the Trial Management Conference

3. Court Interpreter: Counsel shall notify the Court, no later than the date of the Trial Management Conference, of their need for a Court Interpreter.
4. Motions in Limine: All Motions in Limine shall be filed no later than **July 21, 2009** and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a Motion in Limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(c). A written response to a Motion in Limine may be filed no later than ten (10) calendar days thereafter. The Court may rule on Motions in Limine without oral argument. No replies shall be filed. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any Motion in Limine.

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5. Joint Pretrial Statement: Counsel shall file no later than **August 14, 2009** a copy of the Joint Pretrial Statement signed by all counsel.
- a) Deposition Summary: In addition to the information required by Rule 16(d), counsel shall at the Final Pretrial Conference provide to the Court copies of any deposition transcripts to be read to the jury. The offering party will highlight the portions to be read, the other side will highlight Rule 106 additions, and any objections for the Court to rule on will be clearly marked in the margin. The parties are encouraged to agree on narrative summaries of deposition testimony, using brief question and answer excerpts only to emphasize very important testimony or to cover areas of testimony that cannot be summarized to the satisfaction of all counsel. No stipulation should be unreasonably refused.
 - b) Final Trial Witnesses: In addition to the information required by Rule 16(d), the Joint Pretrial Statement shall include an exhibit titled: Final Trial Witness List. This list shall contain the name of each witness a party actually intends to call at Trial, the day on which they intend to call each witness and the **estimated time needed for direct, cross and re-direct examination**.
6. Jury Instructions and Voir Dire Questions: Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall file with their Joint Pretrial Statement:
- a) Proposed voir dire questions.
 - b) A joint set of agreed-upon preliminary and final jury instructions and proposed forms of verdicts.
 - c) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 3d Standard 1 - Duty of Jurors. Non-RAJI instructions should be typed. Each instruction should cover only one subject.

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Duties at Trial Management Conference

7. Counsel shall be prepared to discuss:
 - a) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
 - b) Preliminary jury instructions, mini opening statements and voir dire.
 - c) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
 - d) Any special scheduling or equipment issues.
8. All parties ***must*** contact the Clerk of this division at **602-506-8806**, no later than **August 31, 2009**, regarding the proper procedures for submitting exhibits to be marked for trial in this division.

No later than **September 7, 2009**, all parties shall deliver their exhibits. ***The parties are directed to meet in person to exchange the exhibits before coming to court. The parties will make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits.*** The parties should not reserve exhibit numbers for all Defendants' exhibits, all Plaintiffs' exhibits, miscellaneous demonstrative exhibits, and the like. The parties shall also present original depositions for filing at that time.

If the parties agree to stipulate exhibits into evidence prior to commencement of trial, a written stipulation to admit specified exhibits in evidence must be provided to the Clerk of this division with the exhibits.

Exhibits are marked in numerical order per party, making it necessary to mark all of one party's exhibits before marking the other party's. Accordingly, the Defendant's exhibits numbering shall start at the next number following the last of Plaintiff's exhibits. (For example, Plaintiff submits 82 exhibits, which are marked Exhibit 1 through 82. Defendant submits 63 exhibits, which are marked 83 through 145). Please do not combine the parties' exhibits. Each side's exhibits must be submitted separately and in numerical order.

With regard to trial exhibits, the parties are strongly discouraged from marking exhibits they do not anticipate using during trial. The parties shall include a section in the Joint Pretrial Statement regarding exhibits that *may* be used

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during trial (and need not be initially marked), separate and apart from those exhibits the parties know will be used and should be initially marked as trial exhibits in this case.

9. One day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before the Trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.
10. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

9:22 a.m. Matter concludes.

* **PLEASE NOTE:** Effective March 16, 2009, all cases assigned to Judge Kenneth L. Fields will be re-assigned to Judge John Rea due to judicial calendar rotations. Judge Rea will be located in the East Court Building, 101 West Jefferson, Suite 414, Phoenix, Arizona, 85003.